

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ROBERT CALDWELL,  
#933046

§

VS.

§

CIVIL ACTION NO. 6:09cv91

DIRECTOR, TDCJ-CID

§

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Judith K. Guthrie. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of Petitioner's motion for a default judgment because Respondent had not timely responded to the Petition. The Report and Recommendation states, "Respondent's failure to file a Response within the time limit does not constitute a showing that Petitioner received atypical punishment." Both Petitioner and Respondent filed objections.

This Court has reviewed the objections *de novo* and finds that Petitioner's objections lack merit. However, Respondent's objections correctly point out that he did timely file his Response.

This Court finds that the Magistrate Judge's findings and conclusions are correct and adopts them as the Court's findings and conclusions except the finding that Respondent's Response was

not timely. The Court therefore

**ORDERS** that Petitioner's motion for a default judgment (docket #8) is **DENIED**.

**SIGNED this 1st day of May, 2009.**

A handwritten signature in black ink, reading "Michael H. Schneider". The signature is written in a cursive, flowing style. The first name "Michael" is written in a larger, more prominent script, followed by "H." and "Schneider". The signature is positioned above a horizontal line.

MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE